Supreme Court, U.S.
FILED
SEP 24 1996
CLERK

No. 95-1937

In The

Supreme Court of the United States

October Term, 1995

BERNARD SCHWARTZ,

Petitioner,

v.

DOC'S FOOD STORES, INC.,

Respondent.

On Petition For A Writ Of Certiorari To The Court Of Appeals Of Oklahoma, Division No. 1

PETITIONER'S SUPPLEMENTAL BRIEF

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September 24, 1996

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PETITIONER'S SUPPLEMENTAL BRIEF

Petitioner respectfully calls this Court's attention to the following matter not available at the time of Petitioner's last filing:

1. On September 23, 1996, Petitioner was served with a copy of a judgment of the Oklahoma District Court filed August 2, 1996, awarding Respondent $7627 in attorney fees incurred on appeal in the State of Oklahoma in this case. See Appendix. This award demonstrates dramatically the potential burden on the fundamental right of access to the courts by the instant Oklahoma statute mandating the English loser-pays rule in a case in Small Claims Court, in which the amount in controversy is $400. In particular, though the Oklahoma Supreme Court has ruled that "an attorney's fee request must bear some reasonable relation to the amount in controversy." *Southwest Bell v. Parker Co.*, 737 P.2d 1186, 1189 (Ok. 1987), Petitioner's right to appeal the appellate attorney fees award is definitely chilled by the prospect of having that award at least doubled if he appeals in the Oklahoma courts.

2. The August 2, 1996, judgement of the Oklahoma District Court indicates that that court has retained jurisdiction over an application filed by Respondent for "additional attorney fees and costs incurred by Plaintiff in proceedings still pending before the United States Supreme Court." The implication is that such fees and costs will be awarded if this Court decides against Petitioner. The

potential for such an award directly burdens the right guaranteed by the Constitution and statutes of the United States to bring proceedings in this Court claiming that a state statute violates the Constitution of the United States.

3. Petitioner respectfully requests this Court to hold its decision on his Petition for Certiorari until after the decision in *M.L.B. v. S.L.J.*, No. 95-853, since the decision there may be directly pertinent to this case.

Respectfully submitted,

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APPENDIX

IN THE DISTRICT COURT, SPECIAL JUDGES DIVISION
OF TULSA COUNTY, OKLAHOMA

DOC'S FOOD STORES, INC., Plaintiff,	)	
vs.	)	Small Claims No. 94-10104
BERNARD SCHWARTZ, Defendant.	)	

JOURNAL ENTRY OF JUDGMENT AWARDING ATTORNEY FEES AND COSTS ON APPEAL

(Filed Aug. 2, 1996)

Now on this 19th day of July, 1996, Doc's Food Stores, Inc. appearing through its attorneys James H. Ferris, and John W. Cannon, and Bernard Schwartz appearing pro se, this cause comes on regularly to be heard regarding a determination of attorney fees and costs on appeal as ordered. The court finds that the Plaintiff, Doc's Food Stores, Inc's counsels' time and billable rates are reasonable. The court therefore finds that Plaintiff is entitled to $7,627.00 pursuant to its Application filed herein for attorney fees incurred on appeal in the State of Oklahoma, and $80.51 in costs. The Court at this time makes no determination as to additional attorney fees and costs incurred by Plaintiff in proceedings still pending before the United States Supreme Court. The Plaintiff is also granted leave to make application for

costs for expert witness fees incurred in said hearing within thirty (30) days.

The instant Journal Entry of Judgment Awarding Attorney Fees and Costs on Appeal is supplement and in addition to the Journal Entry of Judgment entered herein on August 24, 1994, awarding Plaintiff $400.00 on his claim, including costs of $67.00 and an attorney's fee of $200.00.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, that Plaintiff, Doc's Food Stores, Inc., have and recover as judgment against Defendant, Bernard Schwartz, for the sum of $7,627.00 in attorney fees and $80.51 in costs, for the total sum of $7,707.51, all of which let execution issue.

IT IS SO ORDERED THIS 2 day of August, 1996.

/s/ Edward Hicks
Judge of the District Court